

1 HONORABLE JAMES L. ROBART  
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IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON AT SEATTLE

9 JOHNNY B. DELASHAW, JR.,  
10  
11 Plaintiff,  
12 v.  
13  
14 Defendants.

Case No. 18-cv-00537-JLR

DECLARATION OF DAVID SABEY

15 I, David Sabey, declare as follows:  
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17 1. I am over age 18 and competent to be a witness. I am making this declaration based  
on facts within my own personal knowledge.

18 2. I am the Chairman and President of Sabey Corporation, which I founded in  
Seattle around forty years ago. I am also a co-founder of the Seattle Science Foundation (SSF).

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20 3. Sabey Corporation is a privately held real estate development and investment  
company. We specialize in developing mission critical and other technical space for the data  
center, medical and life sciences, education, government and military sectors. Since 2003, we  
21 have owned part of the Cherry Hill campus of Swedish Medical Center. The Seattle  
22 Neuroscience Institute (SNI) of Swedish is located at the Cherry Hill campus.  
23  
24 4. Over the past several decades, the Sabey Corporation and our family have been

1 involved in several initiatives to improve our community and contribute to the advancement of  
 2 science and education. Our efforts have included financial contributions to several universities  
 3 and foundations, including the Institute for System Biology, Harvard Systems Biology Advisory  
 4 Board, Providence Health System, Northwest Kidney Centers, Swedish Health System,  
 5 University of Notre Dame, Seattle Science Foundation, University of Washington, Gonzaga  
 6 University, and Seattle University. As part of our community engagement, we also have funded  
 7 the Seattle Times Traffic Lab.

8       5.     SSF began as a collaborative effort between Dr. Mark Reisman of Swedish's  
 9 Heart and Vascular Institute, Joanie Block, former manager of Neuroscience Research and  
 10 Education at SNI, and me. The common vision was: (a) a center for physician education and  
 11 training, conducted in a neutral environment that would foster communication and collaboration  
 12 among medical professionals and industry; and (b) a robust audio/visual production capability  
 13 with access to an expansive international network and ample connectivity to transmit images and  
 14 learning from the best in the medical world to those eager to learn, adopt, and improve upon their  
 15 techniques. Today, SSF has achieved that vision, hosting events and training sessions, some of  
 16 which are broadcast around the world.

17       6.     In 2016 and 2017, I learned that the Seattle Times was contacting Swedish  
 18 employees in search of information for articles about Swedish, the Swedish Neuroscience  
 19 Institute (SNI), SNI surgeons, SSF, and Sabey Corporations's relationship with Swedish.

20       7.     In February 2017 and May 2017, I read the Seattle Times articles about SNI and,  
 21 based on my personal knowledge of many of the surgeons at SNI (including Dr. Delashaw and  
 22 Dr. Oskouian) and SNI, I knew that the articles painted SNI in a false light (that SNI and its  
 23 surgeons placed financial gain ahead of patient safety) and that the articles contained specific  
 24 false statements about the surgeons and SNI. I was disappointed by the Times's articles, which  
 25 had a devastating impact on SNI and particularly on the careers of Drs. Delashaw and Oskouian,

1 both of whom I know well through SSF and whom I respect as extraordinarily talented surgeons  
 2 and advocates for advancement of patient care.

3       8. On July 18, 2017, the co-author of the articles, Mike Baker, called my office and  
 4 asked to speak me. His inquiry confirmed our belief that Baker planned to continue targeting  
 5 SNI and specifically to write an article about me, my company, and/or SSF, and our long-  
 6 standing relationship with Swedish and SNI.

7       9. At that point we sought legal advice from Art Harrigan, who has represented  
 8 Sabey Corporation and me personally in past commercial disputes. I sought Mr. Harrigan and  
 9 his firm's advice on potential avenues to forestall an imminent attack targeting me, SSF, and my  
 10 company; among those avenues was a potential lawsuit, which I would be compelled to file if the  
 11 Times published articles akin to those it had published about SNI and Drs. Oskouian and  
 12 Delashaw.

13      10. In the course of these efforts, it became clear that Dr. Delashaw, Dr. Oskouian,  
 14 my company, and I needed to share analysis of common legal and factual issues, get prepared to  
 15 definitively address potential areas of future misstatements by the Times, analyze common or  
 16 related legal questions, and coordinate these activities to avoid duplicative individual efforts.  
 17 While each participant had his own interest to protect and took issue with the defamatory  
 18 statements made or expected to be made that were about him, there was a considerable overlap in  
 19 both factual and legal questions.

20      11. We began working together with Mr. Harrigan, his partner Tyler Farmer, and  
 21 other lawyers at Mr. Harrigan's firm, and, less frequently, with other lawyers defending Dr.  
 22 Delashaw in litigation arising from the aftermath of the Seattle Times articles to develop  
 23 information, legal analysis, and strategies that included preventing, or addressing, future  
 24 misleading coverage. I understood and agreed that our communications with each other, others  
 25 at my company, Mr. Harrigan's firm, and other lawyers involved in the defense of Dr. Delashaw

1 would be privileged and confidential. We reduced that agreement to writing in November 2017.  
2 While I did not sign the agreement in November 2017, I had Tyler Farmer sign it on my behalf in  
3 December 2017. The written agreement merely reflected our longstanding agreement to work  
4 together to protect ourselves from false reporting by the Seattle Times.

5       12. I worked with counsel to be prepared to take such action as was indicated based  
6 on the forthcoming article (published on December 18, 2017) and, in advance of publication,  
7 took steps to deter the Times from printing inaccuracies. Those steps included providing the  
8 Times with accurate, detailed information about each of the topics about which the Times  
9 inquired. We made certain the Times had the facts relating to the topics about which Mr. Baker  
10 was inquiring and that their possession of the facts was a matter of record. Exhibit 1 to this  
11 declaration is a true and accurate copy of my communication to Mr. Baker on November 10,  
12 2017, answering 14 questions that Mr. Baker had sent to me. These answers were prepared with  
13 the help of counsel to ensure that we minimized the potential for the Seattle Times to  
14 mischaracterize the nature of the relationship between Sabey Corporation and SNI.

15       13. In connection with these efforts, I also personally advised the Seattle Times  
16 management that if any article about Sabey Corporation contained material inaccuracies along  
17 the lines of the articles about SNI and Dr. Delashaw, my response, including a potential legal  
18 response, would be swift and direct.

19           I swear under the penalty of perjury under the laws of the United States that the foregoing  
20 is true and correct.

21           Dated this 7th day of January, 2019.

22           s/ David Sabey \_\_\_\_\_  
23           DAVID SABEY  
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1                   **CERTIFICATE OF SERVICE**

2                   I hereby certify that on January 7, 2019, I electronically filed the foregoing with the Clerk of  
3 the Court using the CM/ECF system which will send notification of such filing to the parties  
4 registered with the Court's ECF system for the above-captioned case.

5                   DATED this 7th day of January, 2019.

6                   HARRIGAN LEYH FARMER & THOMSEN LLP

7                   By: s/Arthur W. Harrigan, Jr.

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14                  *Attorneys for Johnny B. Delashaw, Jr.*